

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 81-5637

PHYLLIS C. SWANGER, Executrix of the Estate
of Carl Swanger, Jr., Deceased, - *Plaintiffs-Appellants*,

v.

THE MUTUAL LIFE INSURANCE COMPANY OF
NEW YORK, - - - - *Defendant-Appellee*.

ORDER* — Filed August 16, 1982

BEFORE: MERRITT, CONTIE, Circuit Judges and **NEESE,
District Judge.

This cause having come on to be heard upon the record,
the briefs and the oral argument of the parties, and upon
due consideration thereof,

It is ORDERED that the judgment of the district court be,
and it hereby is affirmed upon the opinion of the district
court.

ENTERED BY ORDER OF THE COURT.

(s) John P. Hehman, Clerk

*Also issued as mandate: October 12, 1982 and Filed, Eastern
District of Kentucky, October 15, 1982.

**The Honorable C. G. Neese, United States District Judge
Eastern District of Tennessee, sitting by designation.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

Civil Action No. 79-133

PHYLLIS C. SWANGER, Executrix of the Estate
of Carl Swanger, Jr. - - - - - *Plaintiff*

v.

THE MUTUAL LIFE INSURANCE COMPANY OF
NEW YORK - - - - - - *Defendant*

ORDER AND AMENDED FINAL JUDGMENT —

Filed August 5, 1981

The defendant tendered a response to plaintiff's motion to strike an affidavit of Mr. Geruldsen filed in conjunction with a motion for summary judgment. However, said response was received following entry of final judgment of this Court. Although the response and supporting affidavit appear to be superfluous in light of the status of this action, in the interests of a complete record, the Court will permit the affidavit and motion to be filed.

The Court has also reviewed the final judgment entered by the Court on August 5, 1981 and finds that an error exists therein. Specifically, judgment was entered for the plaintiff in the sum of Ten Thousand Dollars (\$10,000). The judgment should have properly granted judgment in the amount of Ten Thousand One Hundred Fifty Dollars (\$10,150). In all other respects, the final judgment is accurate and represents the judgment of the Court.

Accordingly, It Is HEREBY ORDERED AND ADJUDGED,

(1) That the defendant's response and affidavit are FILED.

(2) That the judgment of the Court dated August 5, 1981 is AMENDED to enter judgment for the plaintiff, Phyllis C. Swanger, Executrix of the Estate of Carl Swanger, Jr., and against the defendant, The Mutual Life Insurance Company of New York, in the sum of Ten Thousand One Hundred Fifty Dollars (\$10,150).

This 5th day of August, 1981.

(s) G. Wix Unthank, Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

Civil Action No. 79-133

PHYLLIS C. SWANGER, Executrix of the Estate
of Carl Swanger, Jr. - - - - - *Plaintiff*

v.

THE MUTUAL LIFE INSURANCE COMPANY OF
NEW YORK - - - - - - *Defendant*

FINAL JUDGMENT — Filed August 5, 1981

Pursuant to a memorandum opinion and order entered in the above named and numbered action on the 4th day of August, 1981,

IT IS ORDERED AND ADJUDGED:

That judgment be entered for the plaintiff, Phyllis C. Swanger, Executrix of the Estate of Carl Swanger, and against the defendant, The Mutual Life Insurance Company of New York, in the sum of Ten Thousand (\$10,000) Dollars, representing payment of Ten Thousand (\$10,000) Dollars guaranteed life insurance and One Hundred Fifty (\$150) Dollars, return of premium.

This judgment adjudicates all claims and the rights and liabilities of all parties and is a final judgment.

This 4th day of August, 1981.

(s) G. Wix Unthank, Judge

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

Civil Action No. 79-133

PHYLLIS C. SWANGER, Executrix of the Estate
of Carl Swanger, Jr. - - - - - *Plaintiff*

v.

THE MUTUAL LIFE INSURANCE COMPANY OF
NEW YORK - - - - - - *Defendant*

MEMORANDUM OPINION AND ORDER — Filed August 5, 1981

The above styled action was commenced by the plaintiff by filing a complaint in the Lee Circuit Court alleging a breach of a group insurance contract issued by the Mutual Life Insurance Company of New York (hereinafter "MONY"). The action was subsequently removed from the Lee Circuit Court by the defendant. The case is currently before the Court on cross-motions for summary judgment.

It is undisputed that this Court had jurisdiction of the action by virtue of 28 U.S.C. §1332.

The essential facts of this action are undisputed. Daniels-Head and Associates, Inc., (hereinafter "Daniels-Head"), an independent insurance agency contracted with the Trustees of the Association of Trial Lawyers of America (hereinafter "ATLA") Group Insurance Trust (hereinafter "ATLA Trust") to administer an "ATLA" group insurance program. Upon ATLA's application, MONY issued a group policy to ATLA under which members were eligible for various types of group life insurance.

Daniels-Head then contracted with MONY to solicit insurance applications from ATLA members and collect premiums payable by the ATLA Trust.

On May 23, 1978, Daniels-Head mailed to the members of ATLA, including Carl Swanger, Jr., information concerning the insurance program. Mr. Swanger was thereby invited to apply for insurance in amounts up to \$150,000.00 of which during the open enrollment period, \$10,000.00 was guaranteed to be issued regardless of the applicant's health.

On June 2, 1978, Mr. Swanger mailed an application for \$150,000.00 coverage and his personal check in payment of his semi-annual premiums to Daniels-Head. On June 6, 1976, Daniels-Head received Mr. Swanger's application and check. The check was endorsed and deposited to the ATLA Group Insurance Trust on or about June 12, 1981, an acknowledgment was forwarded to Mr. Swanger which stated: in part.

"Your application has been received and forwarded to the Insurance Company. If applicable, any deposit which has been submitted by you has been placed in a special account pending review and/or approval of the Company."

On June 13, 1978, Mr. Swanger's application was forwarded to MONY for review. On June 27, 1978, MONY notified Mr. Swanger that he was required to submit a report of a medical examination in connection with the application for the higher coverage. Mr. Swanger was advised that MONY had approved the coverage for \$10,000.00. On July 4, 1978, Mr. Swanger was killed in an automobile accident without having the physical examination.

In October, 1978, MONY sent to Mrs. Swanger a check for \$10,150.00 as payment for the \$10,000.00 guaranteed life coverage and a return for \$150.00 which was the premium tendered for the remaining \$140,000.00 coverage.

The sole issue for the determination of the Court is whether a contract for \$150,000.00 insurance was in effect at the date of Mr. Swanger's death.

It is uncontested that the portion of the contract pertaining to the \$10,000.00 guaranteed life insurance was in effect. In fact, it appears that the \$10,000.00 was tendered to Mrs. Swanger who refused to accept delivery thereof.

In essence plaintiff's complaint alleges that when Daniels-Head received the application and check and negotiated the check, a contract for the additional \$140,000.00 coverage was completed. Plaintiff's preliminary conference theorized that the tender of the application and check were effectively delivery of a conditional receipt so that a contract of temporary insurance was created pending MONY's review.

However, the language of the policy and brochure is clearly to the contrary.

EFFECTIVE DATE OF INSURANCE

All coverage is subject to approval by MONY. If your application is approved without further requirements, your insurance will become effective as of the date your application and premium were received by the Plan Administrator. If you are required to furnish any additional evidence of insurability over your own signature, (which may include a medical exam at MONY's expense) your coverage, if approved, will become effective as of the date you furnish evidence of insurability satisfactory to MONY.

Stated more simply, the brochure indicates that coverage could only become effective as of the date evidence required by MONY was supplied by Mr. Swanger.

It is well settled by Kentucky law,

" . . . that if an insurance contract is so drawn as to be ambiguous, or to be fairly susceptible of two dif-

ferent constructions, so that reasonably intelligent men would honestly differ as to the meaning of the contract, the construction most favorable to the insured should be adopted If no real ambiguity exists the rule has no application. *Reynolds Metals Co. v. Insurance Co.*, 41 F. Supp. 129 (W.D. Ky. 1941).

Considering the policy and brochures, the Court is of the opinion there is no real ambiguity as to the effective date of coverage, that is the date on which medical proof of insurability was submitted.

As previously noted, it is undisputed that Mr. Swanger was notified that his premium payments were "placed in a special account pending the review and/or approval of the Company." Had Mr. Swanger been of the opinion that payment of premium and an application for coverage were adequate to effectuate the contract, the above indicated notice and the subsequent request for a medical examination were sufficient to have disabused him of that belief. Accordingly, the Court is of the opinion that the contract for \$140,000.00 insurance coverage was not in force.

As to plaintiff's second contention that there was a contract of temporary or preliminary insurance, the Court is of the opinion that it is also without merit.

The plaintiff cites to the case of *Investors Syndicate Life Insurance Co. v. Slayton*, Ky., 429 S. W. 2d 368 (1968) in which the Court of Appeals found that in Kentucky "conditional receipts" are valid contractual provisions which create a contract of preliminary insurance with the reserved right in the insurer to determine in good faith the applicant's insurability. The plaintiff's have attempted to equate the portion of the brochure discussing an effective date with a conditional receipt.

An application for life insurance is an offer to purchase a policy and the insurer must accept before a contract

exists. Of course, during the time the offer is outstanding and unaccepted, the applicant may revoke his offer. Insurers attempt to discourage or prevent the revocation of offers by use of conditional receipts or "binders" that give the insurer the option of ultimately accepting or rejecting the offer while making the offer irrevocable by conditionally accepting it. The binders, as in *Investors Syndicate Life Insurance Co.* case, *supra*, typically promise insurance to begin on the date of application or receipt with a caveat that the insurance may be denied upon review of the applicant's insurability. In this case there is no indication that any insurance beyond the guaranteed \$10,000.00 will be approved; rather the remaining \$140,000.00 coverage is contingent upon MONY's acceptance. Clearly, MONY did not accept the offer to purchase insurance as acceptance was made contingent upon completion and return of the medical forms.

On July 30, 1981, the plaintiff filed a motion to strike or take deposition and notice. This motion is premised on the unsupported allegations that the affidavit of Edward C. Geruldsen constitutes discovery taken after the date established by the Court for completion of discovery. The Court is of the opinion that the affidavit in question does not constitute discovery within the meaning of Rule 26, Federal Rules of Civil Procedure. Rather the Court finds the affidavit constitutes a supporting affidavit filed as part of a motion for summary judgment as provided for by Rule 56, Federal Rules of Civil Procedure. Accordingly, the Court finds no reason to strike the affidavit. Furthermore, as plaintiff's have made no allegations of any specific inaccuracies within the affidavit, the Court is of the opinion that permitting the taking of a deposition at this late date is not required by the Federal Rules of Civil Procedure and would serve only the purpose of delay.

Accordingly, in keeping with the memorandum opinion herein,

IT IS HEREBY ORDERED:

(1) That plaintiff's motion to strike or take deposition is OVERRULED

(2) That plaintiff's motion for summary judgment is OVERRULED

(3) That defendant's motion for summary judgment is SUSTAINED

(4) That plaintiff's shall receive of defendants the amount of \$10,150.00 representing payment of \$10,000.00 guaranteed life insurance and \$150.00 return of premium.

(5) That the above styled action be STRICKEN from the docket.

This 4th day of August, 1981.

(s) G. Wix Unthank, Judge

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

No. 81-5637

PHYLLIS C. SWANGER, Executrix of the Estate
of Carl Swanger, Jr., Deceased - *Plaintiffs-Appellants,*

v.

THE MUTUAL LIFE INSURANCE COMPANY OF
NEW YORK, - - - - *Defendant-Appellee.*

ORDER DENYING PETITION FOR REHEARING —
Filed September 16, 1982

Before: MERRITT and CONTIE, Circuit Judges; NEESE,*
District Judge

Upon consideration of the petition for rehearing filed herein by the plaintiffs-appellants, the Court concludes that all of the questions addressed in the petition for rehearing were fully considered upon the original submission and decision of this case.

It is, therefore, ORDERED that the petition for rehearing be and it hereby is denied.

ENTERED BY ORDER OF THE COURT

(s) John P. Hehman, Clerk

*The Honorable C. G. Neese, United States District Judge for the Eastern District of Tennessee, sitting by designation.

[LETTERHEAD THE ASSOCIATION OF TRIAL
LAWYERS OF AMERICA]
GROUP INSURANCE PROGRAM

May 23, 1978

HOW MUCH WILL YOU LEAVE YOUR
FAMILY—AFTER ESTATE TAXES?

Dear Member:

There are many reasons for life insurance . . . to provide:

1. A family monthly income.
2. Payment of outstanding debts.
3. Education for your children.
4. Payment of a mortgage.
5. A last expense or burial fund.

The alarming truth is that a sixth need now exists and becomes painfully more apparent every year. This is to provide for the increasingly burdensome inheritance tax. Stop and think. Uncle Sam always comes first. You may be surprised to find the protection you arranged several years ago simply would not meet the basic needs today.

Now with a simple stroke of the pen you can help solve this problem by applying for up to \$150,000 Group Term Life Insurance at Special ATLA Discount rates.

I urge you to do so today. Just review the enclosed brochure and send in the simple application.

If you have any questions, please do not hesitate to call. The toll free number is (800) 848-8691 . . . Ohio residents (800) 282-7502.

Sincerely,

(s) Wm. R. Russell
Wm. R. Russell

**UP TO \$150,000
GROUP TERM LIFE INSURANCE PROGRAM**

Featuring The New Volume Discount

Presented By

**THE ASSOCIATION OF TRIAL LAWYERS
OF AMERICA**

**\$10,000, \$25,000, \$50,000, \$100,000 OR \$150,000
TERM LIFE PROTECTION**

The ATLA endorsed Life Insurance Plan provides members and their employees a choice of \$10,000, \$25,000, \$50,000, \$100,000 or \$150,000 of Term Life Insurance Protection at low group rates*.

In addition, coverage is also available for your spouse and eligible dependent children.

Benefits are payable in the event of death from any cause (except suicide during the first year coverage) anywhere in the world and at any time regardless of any other insurance involved.

*Due to state insurance regulations, individual policies will be issued in Ohio and Texas. Rates for Texas residents will be slightly higher.

PREMIUMS WAIVED WHILE TOTALLY DISABLED

Your coverage will be continued without further payment of premiums during the continuance of a "Total Disability" commencing before your 60th birthday, after you submit satisfactory evidence that it has continued for at least 6 months while insured and periodic satisfactory evidence thereafter.

Your dependents' coverage will be continued without further payment of premiums during any period you are

not required to pay premiums for your coverage because your premiums are being waived for "Total Disability".

BROAD CONVERSION PRIVILEGE

You may convert to any permanent plan of insurance (without waiver of premium for disability or other additional benefits) offered by MONY once your coverage has been in effect for two continuous years. You may convert to any amount up to, but not in excess of, the amount of insurance in effect at the time of conversion.

Your dependents may convert to any permanent plan of insurance (without waiver of premium for disability or other additional benefits) offered by MONY when their coverage terminates because of your attainment of age 70. Your children may also convert any amount up to a maximum of \$10,000 when they cease to be eligible due to their attainment of the limiting age.

CONTINUANCE OF COVERAGE

You may keep your insurance in force to the September 1st coincident with or next following your 70th birthday. Earlier termination may occur only if you fail to pay the premiums, no longer remain a member or employee of an ATLA member, or if the group policy terminates or is amended to terminate coverage on the class of individuals to which you belong.

Dependents' coverage may be continued until the first of the following to occur: for a particular dependent, when he ceases to be eligible as outlined in the "Eligibility" section; for all dependents, when the member's or employee's insurance terminates; when the member or employee fails to remit the proper premium payments or; if the master policy is amended to cancel coverage on the class to which your insured dependents belong.

EFFECTIVE DATE OF INSURANCE

All coverage is subject to approval by MONY. If your application is approved without further requirements, your insurance will become effective as of the date your application and premium were received by the Plan Administrator. If you are required to furnish any additional evidence of insurability over your own signature, (which may include a medical examination at MONY's expense) your coverage, if approved, will become effective as of the date you furnish final evidence of insurability satisfactory to MONY.

Your dependent's coverage, if approved, will be effective as of the date you become insured or, if later, the date the dependent becomes eligible, unless the dependent is hospitalized. In this event, the dependent's coverage will become effective on the day following his final discharge from the hospital.

NOTE: Where the member or employee is uninsurable, dependent coverage will be issued to his insurable dependents.

ELIGIBILITY

ATLA members and their employees under age 60 and actively engaged full time in a gainful occupation may apply for coverage for themselves and their eligible dependents.

Eligible dependents* include the employee's or members lawful spouse (unless legally separated) and each unmarried child (including legally adopted children and step-children) at least 15 days old to their 19th birthday (23rd if still unmarried and primarily dependent upon the member or employee for support and maintenance).

*Due to statutory regulations, dependents' life insurance is not available to Kentucky residents.

DEPENDENT COVERAGE AMOUNTS AVAILABLE

The ATLA Life Insurance Plan offers you the opportunity to apply for Term Life Insurance protection for your spouse and eligible dependent children . . . \$10,000 or \$25,000 for your spouse and \$5,000 for each child over 6 months of age (\$1,000 age 15 days to 6 months). Beneficiary for spouse and children shall in all cases be the applicant.

HOW TO APPLY

1. If you are under age 60, complete, date and sign the application indicating the amount of insurance desired — \$10,000 — \$25,000 — \$50,000 — \$100,000 or \$150,000. If you are applying for dependent coverage, please be sure to answer the health questions for dependents.
2. Detach and mail your application and check for the first premium (made payable to the ATLA Group Insurance Trust) to:

ATLA GROUP INSURANCE TRUST
P. O. Box 650
Portsmouth, Ohio 45662

\$10,000 COVERAGE GUARANTEED REGARDLESS OF HEALTH

During the Open Enrollment Period, ATLA members and their employees under age 40, not presently insured under the ATLA Life Plan, who have been actively engaged in a gainful occupation on a full time basis for the past 30 days will be GUARANTEED \$10,000 COVERAGE REGARDLESS OF HEALTH.

To take advantage of the GUARANTEE offer, your application and premium remittance must be received by the Plan Administrator within the Open Enrollment Period. A letter will follow advising the termination of this offer.

If you apply for the \$10,000 Guarantee Coverage, you need not answer questions 2, 3 and 4 on the application.

For additional amounts of insurance for yourself, or for insurance for your eligible dependents, be sure to answer all questions.

Administered by

DANIELS-HEAD & ASSOCIATES, INC.

729 Sixth Street

Portsmouth, Ohio 45662

Underwritten by MONY For the Future.

The Mutual Insurance Company of New York

1740 Broadway, New York, N.Y. 10019

SEMI-ANNUAL PREMIUM PAYMENT

Member's (Employee's) Age	Volume Discount			
	\$10,000	\$50,000	\$100,000	\$150,000
Under				
Age 30	\$ 10.00	\$ 50.00	\$ 60.00	\$ 90.00
30 - 34	12.00	60.00	80.00	120.00
35 - 39	15.00	75.00	110.00	165.00
40 - 44	25.00	125.00	210.00	315.00
45 - 49	40.00	200.00	360.00	540.00
50 - 54	65.00	325.00	610.00	915.00
55 - 59	100.00	500.00	960.00	1,440.00
60 - 64*	155.00	775.00	1,510.00	2,265.00
65 - 69*	230.00	1,150.00	2,260.00	3,390.00

Rates for \$25,000 coverage are $\frac{1}{2}$ of the \$50,000 rates shown above.

*Renewal Only

ADDITIONAL SEMI-ANNUAL PREMIUMS FOR DEPENDENTS

Member's (Employee's) Age	\$10,000 Spouse Coverage	\$25,000 Spouse Coverage	\$5,000 (Age 15 days to 6 months - \$1,000) Children
Under			
Age 30	\$ 11.50	\$ 28.75	To
30 - 34	12.30	30.75	Include
35 - 39	13.80	34.50	All
40 - 44	18.20	45.50	Eligible
45 - 49	27.40	68.50	Children
50 - 54	42.20	105.50	Add
55 - 59	65.80	164.50	\$14.65
60 - 64*	101.80	254.50	
65 - 69*	152.80	382.00	

*Renewal only

Premiums for members (or employees) and their dependents are based upon the member's (or employee's) attained age on the effective date of his coverage and at his attained age on renewal date. They increase on the September 1st coincident with or next following his reaching a new age class — e.g. 35, 40, etc.

Annual payments are twice semi-annual payments.

MONY reserves the right to change premiums only on a plan-wide basis.

NOTICE REGARDING POSSIBLE EXCHANGE OF INFORMATION

Naturally, information regarding your insurability will be treated as confidential. Mutual of New York may, however, make a brief report thereon to the Medical Information Bureau, (a non-profit membership organization of life insurance companies which operates an information exchange in behalf of its members and their policyholders.) If you apply for or have life or health insurance coverage with another Bureau member company, or submit a claim for benefits to such a company, the Bureau (upon the member company's request) will supply the information in its file to such company.

Upon receipt of a request from you, the Bureau will arrange disclosure of any information it may have about you. Medical information will be disclosed only to your attending physician. If you question the accuracy of information in the Bureau's file, you may contact the Bureau and seek a correction in accordance with the procedures set forth in the Federal Fair Credit Reporting Act. The address of the Bureau's information office is Post Office Box 105, Essex Station, Boston, Massachusetts 02112. Its telephone number is (617) 426-3660.

Mutual of New York may also release information in their files to other life insurance companies to whom you may apply for other life or health insurance or to whom a claim for benefits may be submitted.

Administered by

DANIELS-HEAD & ASSOCIATES, INC.

729 Sixth Street

Portsmouth, Ohio 45662 614/354-4561

Underwritten by MONY For the Future.

The Mutual Insurance Company of New York

1740 Broadway, New York, N.Y. 10019

APPLICATION TO MONTY FOR ATLA GROUP LIFE INSURANCE PROGRAM

Master Group Policyholder-Plan Sponsor and Remitter TRUSTEES OF THE ATLA GROUP INSURANCE TRUST		APPLICANT IS: <input checked="" type="checkbox"/> MEMBER <input type="checkbox"/> EMPLOYEE OF MEMBER		PLEASE LEAVE BLANK G-9978	
APPLICANT'S FULL NAME CARL SWANGER, JR		DATE OF BIRTH 2-26-39	HEIGHT 5 FT. 7 IN.	WEIGHT 165 LBS.	
STREET - NAME & NO. P.O. DRAWER 3		MAIN ST.		41311	
CITY BEATTYVILLE		KENTUCKY		ZIP CODE	
FOR EMPLOYEES ONLY - ENTER NAME AND ADDRESS OF ATLA MEMBER					
BENEFICIARY		RELATIONSHIP			
I HEREBY APPLY FOR THE COVERAGE CHECKED BELOW, BASED UPON ALL MY STATEMENTS MADE IN THIS APPLICATION.					Enter Semi-Annual Premium
MEMBER TERM LIFE INSURANCE		Amount: <input type="checkbox"/> \$10,000 <input type="checkbox"/> \$25,000 <input type="checkbox"/> \$50,000 <input type="checkbox"/> \$100,000 <input checked="" type="checkbox"/> \$150,000		\$ 165.00	
DEPENDENTS TERM LIFE INSURANCE		<input type="checkbox"/> Spouse Coverage Amount <input type="checkbox"/> \$10,000 <input type="checkbox"/> \$25,000 <input type="checkbox"/> Children Coverage		\$	
Check made payable to ATLA Group Insurance Trust for full six month charge must accompany application.					ENTER TOTAL SIX MONTH CHARGE HERE \$ 165.00
LIST ELIGIBLE DEPENDENTS PROPOSED FOR COVERAGE - Lawful spouse (unless legally separated) and all unmarried dependent children from 15 days to 19th birthday (23rd birthday if still unmarried and primarily dependent upon the applicant for support and maintenance). If additional space is needed use remarks section below.					
Spouse (Name)	Date of Birth	Children (Name)	Date of Birth	Children (Name)	Date of Birth
1. Are you now, and have you been for the last 30 days, performing all the duties of your occupation on a full time basis at your usual place of business?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	4. Have you or any person to be insured, ever had: a. Heart trouble, high blood pressure, pain or pressure in chest?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2. During the past 5 years have you, or any person to be insured, consulted any physician or other practitioner, been hospitalized or had an operation?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	b. Rheumatism, arthritis or back disorder?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3. Are you, or any person to be insured, under any kind of medication or, so far as you know, in impaired physical or mental health?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	c. Paralytic spells, convulsions or epilepsy?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
			d. Sugar, blood, albumin or pus in urine?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
			e. Diabetes, kidney trouble, ulcers or digestive disorder?		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
			f. Disorder of female organs or functions?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
			g. Nervous or mental disorder?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
			h. Cancer, tumor or cyst?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
			i. Tuberculosis or other respiratory condition?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
			j. Aneurysm or aneurysm?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
			k. Other health impairment?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
5. If you have answered Question 1 "No" or any of the Other Questions "Yes" give complete details below.					
Question No. And Name Of Proposed Insured	Illness or Condition - Date of Onset - Duration - Treatment - Operations - Degree of Recovery and Date		Name and address of Physicians or other Practitioners and Hospitals where confined or treated.		
2. CARL SWANGER JR	Feb 1978 - Hospitalized one day - Central Baptist, Lexington, Ky - <u>unconscious</u> . Complete recovery.		Doctor <u>Kennard</u> - Surgeon - Lexington, Ky		
4. E -	Some 3 years ago, treated for ulcers - Dr Carl Noble Booneville Ky				

I certify that: (a) all the preceding statements and answers are complete and true to the best of my knowledge and belief; (b) I am a member of the Association of Trial Lawyers of America.

It is mutually agreed that: (a) benefits shall only become effective in such amounts and as of such dates as are unconditionally approved and specified by Mutual of New York; (b) only an Executive Officer of Mutual of New York may accept information not contained in this application, modify any contract or waive any requirements for coverage.

I certify that I have received and read the Notice Regarding Possible Exchange of Information. For purposes of determining my eligibility for insurance, I hereby authorize any physician, practitioner, hospital, clinic, institution, insurance company, Medical Information Bureau, or other organization or person that has records or knowledge of me or my health to give any such information to the Mutual Life Insurance Company of New York (MONTY). If application is made to MONTY for insurance on any member of my family, this authorization also applies to such member.

A photostatic copy of this authorization shall be as valid as the original.

DATE **6/2/78** SIGNATURE OF APPLICANT **Carl Swanger Jr**

Agency No. **16** Field Underwriter **NEW** Code No. **6-3-7**

Underwritten by THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK
1740 BROADWAY, NEW YORK, N.Y. 10019

REC-111
PTD 3/78